

# Disciplinary and Other NASD Actions

## REPORTED FOR JANUARY

NASD® has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of December 2004.

### Firm and Individual Fined

**Emmett A. Larkin & Co., Inc. (CRD #6625, San Francisco, California) and Melvin Lee Peterson (CRD #8596900, Registered Principal, Pacifica, California)** submitted a Letter of Acceptance, Waiver, and Consent in which they were fined \$32,000, jointly and severally. The firm was also fined an additional \$5,000. Without admitting or denying the allegations, the firm and Peterson consented to the described sanctions and to the entry of findings that the firm, acting through Peterson, failed to file timely disclosures for reportable events to NASD within 10 days and to update promptly Forms U4 (Uniform Application for Securities Industry Registration or Transfer) and U5 (Uniform Termination Notice for Securities Industry Registration) for events requiring regulatory disclosure. The findings also stated that the firm had inadequate written procedures for the firm's supervision relating to the prompt reporting of events requiring regulatory disclosure filings. **(NASD Case #C01040027)**

### Firms Fined

**Biltmore International Corporation (CRD #21163, Edison, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$12,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to accept or decline in the Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>) transactions in eligible securities within 20 minutes after execution that the firm had an obligation to accept or decline in ACT as the order entry identifier (OEID). The findings also stated that the firm failed to follow its written supervisory procedures and thus failed to enforce a supervisory system reasonably designed to achieve compliance with NASD Rule 6130(b). **(NASD Case #CMS040174)**

**Buckman, Buckman & Reid, Inc. (CRD #23407, Shrewsbury, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$12,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to accept or decline in ACT transactions in eligible securities within 20 minutes after execution that the firm had an obligation to accept or decline in ACT as the Order Entry Firm. **(NASD Case #CMS040187)**

**The Camelot Group, Inc. (CRD #31091, Ft. Lauderdale, Florida)** was fined \$32,500. The sanction was based on findings that the firm conducted securities business while failing to comply with its minimum net capital requirement and failed to maintain complete, accurate, and current books and records. The findings also stated that the firm materially overstated its net capital in Financial and Operational Combined Uniform Single reports (FOCUS) for four quarters and failed to file its annual audited financial reports in a timely manner for two years. **(NASD Case #C07040051)**

**Conners & Co. (CRD #1511, Cincinnati, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report accurately transactions executed, in that trades were reported late and other trades failed to report the correct time of execution, and that the firm failed to report some transactions. NASD also found that the firm failed to establish, maintain, and enforce a supervisory system reasonably designed to enable it to prevent and detect inaccurate reporting of municipal transactions. **(NASD Case #C8A040099)**

**Essex Radez LLC (CRD #34649, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$27,000, and required to revise the firm's written supervisory procedures with respect to Bid Test, ACT Reporting, and Marking Tickets. Within 30 business days of acceptance of this AWC by the National Adjudicatory Council (NAC), a registered principal of the firm shall submit to NASD a signed, dated letter representing that the firm has revised its written supervisory procedures to address Bid Test, ACT Reporting, and Marking Tickets. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed short sale transactions in NASDAQ National Market® (NNM®) securities at or below the current inside bid when the current inside bid was below the preceding inside bid in the security. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning Bid Test, ACT Reporting, and Marking Tickets. NASD also found that the firm failed, within 90 seconds after execution, to transmit through ACT last sale reports of transactions in NNM securities and failed to designate as ".T" through ACT last sale reports of transactions in NNM securities executed outside normal market hours. **(NASD Case #CMS040178)**

**1st Discount Brokerage, Inc. (CRD #39164, West Palm Beach, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of

findings that it failed to monitor reasonably the outside business activities of a registered representative for compliance with NASD Rule 3030. The findings also stated that the registered representative informed the firm he intended to perform clerical, non-investment related services for a company involved in the securities field when, in fact, he circulated misleading, exaggerated, and unwarranted investment opinions and research reports touting Over-the-Counter (OTC) Bulletin Board and Pink Sheet securities that contained unsubstantiated price projections. NASD also found that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning compliance with NASD Conduct Rule 3030. **(NASD Case #CMS040185)**

**Fixed Income Securities, LP (CRD #46727, Monument, Colorado)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$80,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report the correct time of execution to the Municipal Securities Rulemaking Board (MSRB) in transactions for which the firm had reporting obligations. The findings further stated that the firm failed to report timely any transaction information for transactions in Trade Reporting and Compliance Engine (TRACE) eligible securities. NASD also found that the firm submitted Wells letters in which the firm provided incomplete or inaccurate information concerning who was responsible for supervision for municipal trade reporting and TRACE reporting, and whether that person met his/her responsibilities. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with MSRB Rule G-14 relating to trade reporting in municipal securities and NASD Rule 6230 relating to trade reporting in TRACE-eligible securities. **(NASD Case #CMS040192)**

**GVR Company LLC (CRD #111528, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$25,000, and required to revise within 30 business days its written supervisory procedures with respect to applicable securities laws, regulations, and NASD rules concerning trade reporting for riskless principal trades, trade reporting for short sales, affirmative determination for proprietary short sales, the Order Audit Trail System<sup>SM</sup> (OATS<sup>SM</sup>), Securities and Exchange Commission (SEC) Rule 11Ac1-5, and NASD IM-2110-5 (anti-competitive and harassing behavior). Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it transmitted to OATS reports that contained inaccurate, incomplete, or improperly formatted data. The findings also stated that the reports contained inaccurate routed order identifiers and, therefore, failed to link with reportable order events submitted by an affiliate. Furthermore, NASD found

that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning trade reporting for riskless principal trades, trade reporting for short sales, affirmative determination for proprietary short sales, OATS, SEC Rule 11Ac1-5, and NASD IM-2110-5. (NASD Case #CMS040189)

**Investec (US) Incorporated (CRD #266, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it accepted customer short sale orders in securities and, for each order, failed to make/annotate an affirmative determination that the firm would receive delivery of the security on behalf of the customer or that the firm could borrow the security on behalf of the customer by the settlement date. The findings also stated that the firm failed to preserve for not less than three years, the first in an accessible place, the memorandum of brokerage orders. (NASD Case #CMS040175)

**J.H. Darbie & Co., Inc. (CRD #43520, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$12,500, and required to revise the firm's written supervisory procedures with respect to ACT trade reporting. Within 30 business days of acceptance of this AWC by the NAC, a registered principal of the firm shall submit to NASD a signed, dated letter representing that the firm has revised its written supervisory procedures to address ACT trade reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to accept or decline in ACT transactions in eligible securities within 20 minutes after execution that the firm had an obligation to accept or decline in ACT as the OEID. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning ACT trade reporting. (NASD Case #CMS040180)

**Legg Mason Wood Walker, Inc. (CRD #6555, Baltimore, Maryland)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required to pay \$453.53, plus interest, in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that in transactions for or with a public customer, the firm failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions. The findings also stated that the firm failed to execute customer market orders fully and promptly. (NASD Case #CMS040183)

**Nomura Securities International, Inc. (CRD #4297, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$12,500, and required to revise the firm's written supervisory procedures with respect to ACT reporting. Within 30 business days of acceptance of this AWC by the NAC, a registered principal of the firm shall submit to NASD a signed, dated letter representing that the firm has revised its written supervisory procedures to address ACT reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report to ACT the correct symbol indicating whether the firm executed transactions in eligible securities in a principal or agency capacity. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning ACT reporting. (NASD Case #CMS040181)

**NT Securities, LLC (CRD #45694, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report timely to OATS reportable order events (ROEs). The findings also stated that the firm submitted to OATS reports with respect to equity securities traded on The Nasdaq Stock Market, Inc. (NASDAQ) that were not in the electronic form prescribed by NASD and were repairable. The reports were rejected by the OATS system and notice of such rejection was made available to the firm on the OATS Web site, but the firm failed to correct or replace 96 percent of the reports. (NASD Case #CMS040188)

**Raymond James Financial Services, Inc. (CRD #6694, St. Petersburg, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to enforce a supervisory system and written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules regarding the formation and maintenance of a partnership with a public customer of the firm. (NASD Case #C8A040107)

**Timber Hill LLC (CRD #33319, Greenwich, Connecticut)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$25,000, and required to revise the firm's written supervisory procedures regarding the reporting of short sales to ACT. Within 30 business days of acceptance of this AWC by the NAC, a registered principal of the firm shall submit to NASD a signed, dated letter representing that the firm has revised its written supervisory procedures to address reporting short sales to ACT.

Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report to ACT the correct symbol indicating whether the transaction was a buy, sell, sell short, sell short exempt, or cross for transactions in eligible securities and effected sell orders for securities registered on a national securities exchange without marking each such order “long” or “short.” The findings also stated that the firm made available reports on the covered orders in national market systems that it received for execution from any person that inadvertently included incomplete information concerning “Average Realized Spread” and “Average Effective Spread” and a report on the covered orders in national market systems securities that it received for execution from any person that inadvertently included incorrect information concerning “Average Realized Spread” for market orders between 500 and 1,999 shares in a security. NASD also found that the firm’s supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning short sales. (NASD Case #CMS040173)

**Trident Securities, A Division of McDonald Investments, Inc. (CRD #566, Cleveland, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to make available, or failed to make available in a timely manner, reports on the covered orders in national market system securities that it received for execution from any person. The findings also stated that the firm failed to make publicly available reports on its routing of non-directed orders in covered securities. NASD also found that the firm’s supervisory system did not provide for supervision reasonably designed to achieve compliance with SEC Rules 11Ac1-5 and 11Ac1-6. (NASD Case #CMS040184)

**W. R. Hambrecht & Co., L.L.C. (CRD #45040, San Francisco, California)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report correctly to ACT the transaction type for transactions that were reported as cross transactions when they were, in fact, riskless principal transactions; failed to prepare and retain an order ticket for one side of the trade in trades effected on a riskless principal basis; and failed to indicate the time of execution on order tickets in trades effected on a riskless principal basis. The findings also stated that the firm’s Anti-Money Laundering (AML) Program was not approved in writing by a member of senior management; failed to identify the internal controls the firm would implement to detect attempts to open correspondent accounts by foreign banks; failed to require the address of U.S. designated agents when opening correspondent accounts for foreign banks; and failed to

specify the time frame in which the firm would terminate its relationship with a foreign bank upon notification by the Secretary of Treasury or the Attorney General that the foreign bank had failed to comply with or contest a summons.

NASD also found that the firm’s AML Program failed to specify the firm’s policy on opening or maintaining private banking accounts for non-U.S. persons and failed to describe the internal controls the firm would implement to detect attempts to open such accounts; failed to have procedures to freeze accounts and prohibit transactions with persons suspected of terrorist activities pursuant to Executive Order #13224 issued by the Office of Foreign Assets Control; and failed to have procedures for providing information to federal law enforcement officers not later than seven days after receipt of a request. (NASD Case #C01040028)

## Individuals Barred or Suspended

**Thomas Macaulay Babington, Jr. (CRD #2103727, Registered Representative, Palm Bay, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Babington consented to the described sanction and to the entry of findings that he misrepresented the sales charge on a unit investment trust product to public customers and forged their signatures on the transaction cover sheet that would have disclosed the correct sales charge. (NASD Case #C07040095)

**Louis Joseph Bacher, Jr. (CRD #1033017, Registered Principal, Benicia, California), Robert Jay Holub (CRD #1321893, Registered Principal, Alamo, California), and Robert Stephen Minka (CRD #1242065, Registered Principal, Vacaville, California)** submitted Offers of Settlement in which Bacher and Holub were barred from association with any NASD member in any capacity, and Minka was fined \$10,000 and barred from association with any NASD member in a principal capacity. Without admitting or denying the allegations, Bacher, Holub, and Minka consented to the described sanctions and to the entry of findings that they permitted a statutorily disqualified person to be associated with their member firm. (NASD Case #C01040004)

**Inna Basieva a/k/a Inna Tedelev (CRD #4025062, Registered Representative, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Basieva consented to the described sanction and to the entry of findings that she arranged for an imposter to take the Series 6 and Series 65 qualification exams on her behalf. (NASD Case #CLI040034)



**Karl Francis Birkenfeld (CRD #1342720, Registered Representative, Yonkers, New York)** submitted an Offer of Settlement in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Birkenfeld consented to the described sanctions and to the entry of findings that he assisted an individual with obtaining a mortgage by falsely representing the individual's employment status and income on documents that comprised a portion of the mortgage application.

Birkenfeld's suspension began December 6, 2004, and concluded at the close of business December 17, 2004. (NASD Case #C10040021)

**Bryce Allen Boltz (CRD #4569741, Registered Representative, Cuyahoga Falls, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Boltz consented to the described sanction and to the entry of findings that he issued, or caused to be issued, an ATM card for a public customer of his member firm's bank-affiliate without the knowledge or consent of the customer. The findings also stated that Boltz used the card to withdraw funds totaling \$2,700 from the customer's bank account, also without the customer's knowledge or consent. (NASD Case #C8A040105)

**Tony Ricardo Brown (CRD #2637009, Registered Representative, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 10 business days. The fine must be paid before Brown reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Brown consented to the described sanctions and to the entry of findings that he engaged in outside business activities and failed and neglected to provide prompt written notice to his member firm.

Brown's suspension began January 3, 2005, and concluded at the close of business January 14, 2005. (NASD Case #C8A040100)

**Joseph Charles Broyles (CRD #2834483, Registered Representative, Centereach, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Broyles failed to respond to NASD requests for information. The findings also stated that Broyles effected transactions in the account of a public customer without the customer's knowledge, authorization, or consent. (NASD Case #CLI040014)

**Lindie Lou Byers (CRD #4492094, Associated Person, Millington, Tennessee)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Byers caused checks made payable to various health care providers totaling \$56,078.41 to be issued from a revocable trust account at her member firm without the knowledge or consent of the account trustee or the beneficiary of the trust; deposited the checks into bank accounts she controlled or to which she had access; and withdrew the funds and converted them to her own use and benefit. The findings also stated that Byers failed to respond to NASD requests for information. (NASD Case #C05040028)

**Daniel Thomas Cella (CRD #2751862, Registered Principal, Valley Cottage, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cella consented to the described sanction and to the entry of findings that he made inaccurate entries to his member firm's books and records that concealed the existence of approximately \$1,000,000 worth of bonds. (NASD Case #C9B040097)

**Gerard Robert Celmer (CRD #1779511, Registered Representative, Summit, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Celmer consented to the described sanction and to the entry of findings that he pled guilty in the State of New York to an unclassified misdemeanor charge that he committed securities fraud. (NASD Case #C10040109)

**Valerie Sue Chandler (CRD #4299431, Registered Representative, Selbyville, Delaware)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Chandler consented to the described sanction and to the entry of findings that she caused a bank certificate of deposit (CD) owned by a customer of a bank affiliated with her member firm to be redeemed without the customer's knowledge or authorization by forging the customer's signature on a form she completed and used to redeem the CD, thereby converting \$4,987 in cash to her own use and benefit. (NASD Case #C9A040051)

**Michael Klee Clark (CRD #870083, Registered Representative, Santa Barbara, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Clark reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification.

Without admitting or denying the allegations, Clark consented to the described sanctions and to the entry of findings that he willfully failed to amend his Form U4 to disclose a material fact.

Clark's suspension began January 3, 2005, and will conclude at the close of business January 2, 2006. (NASD Case #C02040047)

**Terry Alan Coursey (CRD #1342245, Registered Representative, Burlington, Iowa)** submitted an Offer of Settlement in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 60 days. The fine must be paid before Coursey reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Coursey consented to the described sanctions and to the entry of findings that he willfully failed to disclose material facts on his Form U4.

Coursey's suspension began January 3, 2005, and will conclude at the close of business March 3, 2005. (NASD Case #C04040035)

**Wayne Franklin Currie (CRD #3189447, Registered Representative, Marietta, Georgia)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for two months. The fine must be paid before Currie reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Currie consented to the described sanctions and to the entry of findings that he failed to give prompt notice of his outside business activities to his member firm.

Currie's suspension began January 3, 2005, and will conclude at the close of business March 2, 2005. (NASD Case #C07040093)

**Roger Martin Dail (CRD #3049554, Registered Representative, Brooklyn, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Dail willfully failed to disclose a material fact on his Form U4. (NASD Case #C10040038)

**Joseph M. DeMercede (CRD #1236793, Registered Representative, Aurora, Illinois)** submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before DeMercede reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, DeMercede consented to the described sanctions and to the entry of findings that he willfully failed to disclose material facts on his Form U4.

DeMercede's suspension began December 6, 2004, and will conclude March 5, 2005. (NASD Case #C8A040053)

**Kampta Doobay (CRD #1042985, Registered Representative, New Oakland, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before Doobay reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Doobay consented to the described sanctions and to the entry of findings that he circumvented the requirements of New York State Department of Insurance Regulation 60 in connection with the replacement of life insurance policies for public customers. The findings also stated that although Doobay met with each of the customers on two different occasions to discuss the advantages and disadvantages of the replacement products versus the existing products as required by Regulation 60, he backdated replacement documentation for the customers to indicate that all of the documents had been signed by the customers during their initial meetings with Doobay.

Doobay's suspension will begin January 18, 2005, and will conclude at the close of business February 28, 2005. (NASD Case #CL1040033)

**Taurese L. Edge (CRD #4537340, Registered Representative, Carmel, Indiana)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Edge reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Edge consented to the described sanctions and to the entry of findings that he willfully failed to disclose material facts on his Form U4.

Edge's suspension began January 3, 2005, and will conclude at the close of business January 2, 2006. (NASD Case #C8A040102)

**Masahiko Fukano (CRD #3239348, Registered Principal, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for five months. The fine must be paid before Fukano reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Fukano consented to the described sanctions and to the entry of findings that he guaranteed a public customer against losses in her accounts on several occasions and attempted to settle the customer's complaint concerning losses without informing and obtaining authorization from his member firm.

Fukano's suspension began January 3, 2005, and will conclude at the close of business June 2, 2005. (NASD Case #C10040112)

**Fred Granik (CRD #2473748, Registered Representative, Brooklyn, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Granik was authorized to use a corporate credit card by the card's holder to charge airfare and hotel expenses for a business trip but Granik also charged an additional \$727.35 for personal expenses to the card without the individual's authorization and failed to pay the individual for the total amount of \$3,304.07 he charged to the credit card. The findings also stated that Granik willfully failed to disclose material facts on his Form U4. (NASD Case #C9B040050)

**Morton Gerald Gropper (CRD #2654159, Registered Representative, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500, suspended from association with any NASD member in any capacity for 30 days, and ordered to pay \$4,520.21, plus interest, in disgorgement of commissions as partial restitution to a public customer. Without admitting or denying the allegations, Gropper consented to the described sanctions and to the entry of findings that he caused to be executed securities transactions in the account of a public customer that were unsuitable based on the customer's financial situation, investment objectives, and needs.

Gropper's suspension began December 6, 2004, and concluded at the close of business January 4, 2005. (NASD Case #C04040053)

**Michael John Hanchar (CRD #2051679, Registered Principal, Canon City, Colorado)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Hanchar converted \$772,170.82 by unlawfully making redemptions from the mutual fund accounts of public customers, wiring the proceeds to bank accounts of other unrelated shareholders, and subsequently transferring the proceeds to bank accounts he controlled. The findings also stated that Hanchar failed to respond to NASD requests for information. (NASD Case #C3A040009)

**William Franklin Herndon (CRD #1984310, Registered Principal, Wichita, Kansas)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Herndon consented to the described sanctions and to the entry of findings that he engaged in private securities transactions totaling \$112,000 without notifying his member firm of the transactions and his role therein, and without receiving prior written approval from his member firm.

Herndon's suspension will begin January 18, 2005, and will conclude at the close of business March 18, 2005. (NASD Case #C04040057)

**Mitchell Hersh (CRD #874733, Registered Representative, Staten Island, New York)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hersh consented to the described sanction and to the entry of findings that he knowingly falsified, and/or caused to be falsified, variable annuity policy applications for public customers by recording inaccurate addresses for the customers in order to sell them variable annuity contracts not approved for sale in the states where the customers actually resided. The findings also stated that Hersh knowingly falsified, and/or caused to be falsified, a variable annuity policy application for a customer by recording that the policy application was signed in Florida when, in fact, the application was signed in New York. NASD also found that Hersh knowingly sold variable annuity contracts to public customers that were not approved for sale in the states of the customers' residences. (NASD Case #C10040101)

**Antoine J. Hutcheson (CRD #4756526, Associated Person, Metropolis, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one month. The fine is due and payable before Hutcheson reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Hutcheson consented to the described sanctions and to the entry of findings that he failed to disclose material facts on his Form U4.

Hutcheson's suspension began January 3, 2005, and will conclude at the close of business February 2, 2005. (NASD Case #C8A040101)

**James Lee Johnstone (CRD #2357330, Registered Representative, Houston, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$25,000 and suspended from association with any NASD member in any capacity for 18 months. The fine must be paid before Johnstone reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Johnstone consented to the described sanctions and to the entry of findings that he made material written representations to a public customer in connection with the sale of securities that were false in that a deferred variable annuity has no guaranteed contract value and there can be no assurance that an investment in mutual fund shares will not decrease in value. The findings also stated that Johnstone recommended and effected the sale of Class B mutual fund shares in the aggregate amount of \$1,093,000 to a public customer without reasonable grounds for

believing the recommendations and transactions were suitable for the customer on the basis of his financial situation and needs.

Johnstone's suspension began January 3, 2005, and will conclude July 2, 2006. (NASD Case #C05040083)

**Gregory Adam Jurkiewicz (CRD #2582435, Registered Representative, Dunedin, Florida)** was barred from association with any NASD member in any capacity and ordered to pay \$1,729.86, plus interest, in restitution to a public customer. The sanctions were based on findings that Jurkiewicz failed to respond to NASD requests for information and that he made unsuitable recommendations to public customers. The findings also stated that Jurkiewicz negligently failed to disclose material information when he recommended that a public customer purchase mutual funds and failed to disclose that Class B shares of mutual funds incurred higher annual internal expenses than Class A shares, that Class A shares were available at discounted charges for purchases exceeding certain dollar amounts, and that he would receive a higher commission if the customer purchased Class B shares. (NASD Case #C3A040020)

**Frank A. Katona (CRD #2620194, Registered Representative, Porte Madera, California)** submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for one year and required to requalify by exam before acting in any registered capacity with any NASD member. In light of the financial status of Katona, no monetary sanctions have been imposed. Without admitting or denying the allegations, Katona consented to the described sanctions and to the entry of findings that he substantially participated in the sale of unregistered securities. The findings also stated that Katona entered into an arrangement with the principals of a private company to help raise money by selling "to be issued" shares to public customers and failed to tell them that 25 percent of the money they invested was compensation to him. NASD also found that Katona failed to amend his Form U4 to disclose material information.

Katona's suspension began December 6, 2004, and will conclude at the close of business December 5, 2005. (NASD Case #CAF040020)

**Herbert Ivan Kay (CRD #1374570, Registered Principal, Tucson, Arizona)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Kay engaged in private securities transactions and failed to provide prior written notice to his member firm. (NASD Case #C3A030015)

**Jerald Michael Kennedy (CRD #4163151, Registered Representative, Columbus, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, with credit for \$2,300 in commissions that Kennedy's member

firm disallowed, and suspended from association with any NASD member in any capacity for three months with credit for 45 of the 90 days for the days that he was suspended by his member firm. Without admitting or denying the allegations, Kennedy consented to the described sanctions and to the entry of findings that he affixed the signatures of public customers, without their knowledge or approval, on switch letters that explain the actual or potential charges associated with selling mutual funds from one fund family and purchasing mutual funds in another fund family.

Kennedy's suspension began January 3, 2005, and will conclude at the close of business February 16, 2005. (NASD Case #C8A040108)

**Elliot J. Kozak (CRD #4686042, Associated Person, Forest Hills, New York)** submitted an Offer of Settlement in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for seven months. The fine must be paid before Kozak reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kozak consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on his Form U4.

Kozak's suspension will begin January 18, 2005, and will conclude at the close of business August 17, 2005. (NASD Case #C10040097)

**Ibrahim Ethem Kurtulus (CRD #2287372, Registered Representative, Staten Island, New York)** submitted an Offer of Settlement in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Kurtulus consented to the described sanctions and to the entry of findings that he opened brokerage accounts for public customers at his member firm without the knowledge, authorization, or consent of the customers. The findings also stated that Kurtulus effected transactions in the accounts of public customers that he had opened without the customers' consent.

Kurtulus' suspension began December 6, 2004, and concluded at the close of business December 17, 2004. (NASD Case #C10040030)

**Brian Ladah (CRD #1013931, Registered Principal, San Francisco, California)** submitted an Offer of Settlement in which he was fined \$5,000, suspended from association with any NASD member in any capacity for two years, and ordered to disgorge \$49,200, plus interest, of commissions in restitution to public customers. The fine and restitution amounts must be paid before Ladah reassociates with any NASD member following the suspension or before requesting relief from any statutory



disqualification. Without admitting or denying the allegations, Ladah consented to the described sanctions and to the entry of findings that he engaged in private securities transactions outside the normal scope of employment with his member firm and failed to give prior written notice to, and receive approval from, his member firm. The findings also stated that Ladah engaged in outside business activities without providing prompt written notice to his member firm.

Ladah's suspension will begin January 18, 2005, and will conclude at the close of business January 17, 2007. (NASD Case #C11040038)

**John Charles Levy (CRD #2138964, Registered Representative, Midland, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Levy reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Levy consented to the described sanctions and to the entry of findings that he created a pledge agreement to assist a public customer attempting to use his account with Levy's member firm as collateral for a loan, signed the pledge agreement, and delivered the pledge agreement to the customer who submitted it to the bank even though it had not been approved or authorized by Levy's firm.

Levy's suspension began January 3, 2005, and will conclude July 2, 2005. (NASD Case #C8A040104)

**Robert Stephen Marche (CRD #2709142, Registered Representative, Sherwood, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 days. The fine must be paid before Marche reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Marche consented to the described sanctions and to the entry of findings that he effected discretionary transactions in the accounts of a public customer pursuant to verbal authority without prior written authorization from the customer and prior written acceptance of the accounts as discretionary by his member firm. The findings also stated that Marche placed orders for transactions in securities accounts maintained at his former member firm without notifying the firm that he had become associated with another member firm and without notifying his new member firm that he had the securities accounts at his former firm.

Marche's suspension began January 3, 2005, and concluded at the close of business January 12, 2005. (NASD Case #C8A040103)

**Craig Robert McCasland (CRD #4245011, Registered Representative, Steubenville, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 business days and three months. The fine must be paid before McCasland reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, McCasland consented to the described sanctions and to the entry of findings that he failed to submit timely an amended Form U4 disclosing material information and failed to respond in a timely manner to an NASD request for information.

McCasland's suspension will begin January 18, 2005, and will conclude at the close of business May 27, 2005. (NASD Case #C8A040110)

**Ross James McVey, Jr. (CRD #2336041, Registered Representative, Oshkosh, Wisconsin)** was barred from association with any NASD member in any capacity. The sanction was based on findings that McVey prepared and submitted documents on which the purported signatures of public customers were affixed without their knowledge or consent so that he could obtain payments for financial plans that he did not provide to the customers; as a result, the customers were improperly charged fees totaling more than \$120,000 that were paid to and used by McVey. The findings also stated that McVey failed to respond to NASD requests to appear and provide testimony. (NASD Case #C8A040020)

**Arthur James Menlove (CRD #1636358, Registered Representative, Ann Arbor, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Menlove consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information, documents, and to appear to give testimony. (NASD Case #C8A040113)

**Brian Clark Miller (CRD #4390730, Registered Representative, Bryan, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Miller consented to the described sanction and to the entry of findings that he received \$4,215.26 in insurance premium payments from customers of an insurance affiliate of his member firm, improperly withheld the payments, and deposited the money in his operating bank account, thereby converting the funds to his own personal use and benefit without the knowledge or consent of the customers or the insurance affiliate. (NASD Case #C05040078)

**Deepak Shankardas Mirchandani (CRD #4380477, Registered Representative, Flushing, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was

fined \$5,000 and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Mirchandani consented to the described sanctions and to the entry of findings that he falsified the social security number of a client on an insurance application as an accommodation to the customer who was in the process of marrying a United States citizen and was awaiting citizenship documentation and a valid social security number.

Mirchandani's suspension will begin January 18, 2005, and will conclude at the close of business April 18, 2005. (NASD Case #CLI040032)

**Mark John Moeller (CRD #2469139, Registered Representative, Birmingham, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Moeller consented to the described sanction and to the entry of findings that he received a \$3,681 dividend check payable to a public customer, failed to place the funds into the customer's investment account as directed, and deposited the check bearing a forged endorsement of the customer into his personal checking account without the customer's knowledge and consent and used the funds for his own use and benefit and not for the benefit of the customer. The findings also stated that Moeller failed to respond to NASD requests for information, documentation, and to appear to give testimony. (NASD Case #C8A040106)

**Gary Lee Myers (CRD #2150840, Registered Representative, Monaca, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Myers reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Myers consented to the described sanctions and to the entry of findings that he willfully failed to amend his Form U4 to disclose material information.

Myers' suspension began January 3, 2005, and will conclude July 2, 2005. (NASD Case #C9A040052)

**Alfred Sinclair Olsen, IV (CRD #2742717, Registered Principal, Spokane, Washington)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any principal capacity for one year. Olsen also consented to testify if NASD files disciplinary proceedings against his former member firm's current or former agents relating to the misconduct referenced in this AWC. Without admitting or denying the allegations, Olsen consented to the described sanctions and to the entry of findings that, as the supervisor for the registered representatives of his member firm, he was unable to monitor

reasonably their sales activities. The findings also stated that although Olsen knew, or should have known, that he would be unable to supervise reasonably such a large number of geographically disbursed registered representatives, he continued to act as supervisor while fraudulent and deceptive sales practices, material misrepresentations, and unsuitable recommendations persisted at his firm. NASD also found that the supervisory action taken by Olsen in the face of red flags indicating improper sales practices was inadequate in that he reviewed and approved subscription agreements that indicated the proprietary products were not suitable for the investing customers.

Olsen's suspension began December 6, 2004, and will conclude at the close of business December 5, 2005. (NASD Case #C3B040027)

**Albert Vincent Otero (CRD #354159, Registered Representative, Dobbs Ferry, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$3,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Otero consented to the described sanctions and to the entry of findings that he wrote checks totaling \$404 to a public customer to prevent the customer from making complaints to Otero concerning contingent deferred sales charges relating to the customer's account without the knowledge or approval of Otero's member firm.

Otero's suspension began January 3, 2005, and concluded at the close of business January 14, 2005. (NASD Case #C11040039)

**Kristi Ann Parrott (CRD #3042980, Associated Person, Arlington, Texas)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Parrott prepared correct bank slips for deposit of her member firm's daily receipts into various accounts at the firm's clearing firm but transmitted false electronic lists to the clearing firm to divert approximately \$23,168.70 into her personal account, which she quickly withdrew by check or ATM. The findings also stated that Parrott accomplished the diversion of funds by falsifying the amounts of deposit to her account, duplicating the amount of deposit to her account on the electronic list, or by listing fictitious deposits to her account on the electronic list. NASD also found that to conceal her conduct, Parrott used other employees' electronic IDs when transmitting fraudulent electronic lists to the clearing firm and destroyed copies of the relevant deposit slips. (NASD Case #C06040019)

**Steve R. Pearson (CRD #4315047, Registered Representative, Skiatook, Oklahoma)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pearson consented to the

described sanction and to the entry of findings that he received \$59,798.79 in insurance premium payments from customers of an insurance affiliate of his member firm; improperly withheld the payments; and deposited the money in his operating bank account, thereby converting the funds to his own personal and business use and benefit without the knowledge or consent of the customers or the insurance affiliate. The findings also stated that Pearson issued false receipts for payments and fraudulent Memorandums of Insurance, including nonexistent policy numbers to satisfy inquiring customers. (NASD Case #C05040079)

**Raul Peralta (CRD #4547226, Associated Person, Chicago, Illinois)** was barred from association with any NASD member in any capacity. The sanction was based on findings that he affixed the signature of a public customer as an endorsement on a \$2,667.47 check that had been made payable to the customer and cashed the check without the customer's knowledge, consent, or authorization, thereby misusing customer funds. The findings also stated that Peralta failed to respond to NASD requests for information. (NASD Case #C8A040062)

**James Bernard Peterson, Sr. (CRD #1370895, Registered Representative, Hinsdale, Illinois)** was fined \$15,000 and suspended from association with any NASD member in any capacity for 13 months. The fine is due and payable when and if Peterson seeks to return to the securities industry. The sanctions were based on findings that Peterson failed to effect promptly a transaction in response to a public customer's direction. The findings also stated that Peterson attempted to settle a complaint away from his member firm by offering to pay the customer for the loss caused by Peterson's delay in moving variable annuity sub-accounts. NASD also found that Peterson failed to respond to NASD requests for information and documents in a timely manner.

Peterson's suspension began December 6, 2004, and will conclude at the close of business January 5, 2006. (NASD Case #C8A040034)

**Randal Anthony Pitino (CRD #2366765, Registered Representative, Huntington, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Pitino failed to respond to NASD requests for information. The findings also stated that Pitino executed unmatched transactions and to conceal his misconduct, submitted trade orders that did not represent bona fide customer orders and/or delayed submitting the trade information to conceal the time lag between the two legs of a seemingly matched transaction. (NASD Case #C10040051)

**Kyle Edward Pittenger (CRD #2822088, Registered Principal, Geneseo, Illinois)** submitted a Letter of Acceptance, Waiver, or Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for three

months. The fine must be paid before Pittenger reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Pittenger consented to the described sanctions and to the entry of findings that he engaged in outside business activities and failed and neglected to provide prompt written notice to his member firm.

Pittenger's suspension will begin January 18, 2005, and will conclude April 17, 2005. (NASD Case #C8A040111)

**David Allen Regis (CRD #868184, Registered Representative, Arlington, Texas)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Regis failed to respond to NASD requests to appear and give testimony. The findings also stated that Regis engaged in private securities transactions without prior written notice to his member firm describing the proposed transaction, his proposed role in the transaction, and stating whether he had received, or might receive, compensation. NASD also found that Regis was never registered as a general securities representative and that the payphone investment contracts he sold to public customers did not fall within any of the permissible categories he was allowed to sell. (NASD Case #C06040017)

**Earl Lee Richardson (CRD #2218514, Registered Supervisor, Houston, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any principal capacity for 30 business days. Without admitting or denying the allegations, Richardson consented to the described sanctions and to the entry of findings that he failed and neglected to supervise adequately a registered representative who recommended and effected the sale of Class B mutual fund shares in the aggregate amount of \$1,093,000 to a public customer without having a reasonable basis for believing the recommendations and transactions were suitable for the customer on the basis of the customer's financial situation and needs. The findings also stated that Richardson approved the transactions without sufficiently investigating whether the customer's investment objectives could have been achieved through an investment in Class A shares where the customer would have been able to take advantage of breakpoints.

Richardson's suspension began December 6, 2004, and concluded at the close of business January 14, 2005. (NASD Case #C05040080)

**Scott Paul Richmond (CRD #2895009, Registered Representative, Leawood, Kansas)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Richmond consented to the described sanction and to the entry of findings that he misused the funds of public customers totaling \$100,742.59 without the

knowledge, consent, or authorization of the customers. The findings also stated that Richmond failed to respond to NASD requests for information. (NASD Case #C04040058)

**Edward Francis Sadowski (CRD #832094, Registered Principal, Neptune, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000, suspended from association with any NASD member in any capacity for two years, and ordered to pay \$60,070, plus interest, in restitution to public customers. The fine and restitution amounts must be paid before Sadowski reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Sadowski consented to the described sanctions and to the entry of findings that he recommended that a public customer surrender variable annuities and purchase new variable annuities without having a reasonable basis for believing the recommendations were suitable based upon the customer's investment objectives, financial situation, and needs, causing the customer unnecessarily incurred surrender charges while Sadowski earned commissions for purchases of comparable products. The findings also stated that Sadowski knowingly charged public customers a fee for market-timing services that he did not and could not perform.

Sadowski's suspension began January 3, 2005, and will conclude at the close of business January 2, 2007. (NASD Case #C9B040102)

**Cantwell Paul Sandifur, Jr. (CRD #1208656, Registered Principal, Spokane, Washington)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Sandifur also consented to testify if NASD files disciplinary proceedings against the firm's current or former agents relating to the misconduct referenced in this AWC. Without admitting or denying the allegations, Sandifur consented to the described sanction and to the entry of findings that registered representatives of a member firm, under his direction and control, engaged in fraudulent and deceptive sales practices by making material misrepresentations and omitting material facts with the sale of proprietary products to public customers without an adequate basis for recommending the proprietary products to customers for whom the sales were unsuitable. The findings also stated that Sandifur and the firm's compliance officer spent the majority of their time working as officers and/or directors of affiliated companies, and the compliance officer delegated his responsibilities to others who were unqualified, inexperienced, and unable to perform the delegated tasks due to insufficient staffing.

NASD also found that Sandifur knew, or should have known, that the compliance officer and the supervisor of all the registered representatives were not effectively discharging their responsibilities. In addition, NASD found that Sandifur, as

president of the firm, was responsible for establishing an effective supervisory system at the firm, but the firm's supervisory system was not reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules regarding monitoring the sales activities and recommendations of registered representatives; was not reasonably designed to achieve compliance training for sales presentations of proprietary products; and did not provide guidance concerning the risk level and suitability of proprietary products for investors with a low to medium risk tolerance and/or preservation of capital as a primary investment objective. (NASD Case #C3B040028)

**James A. Scavuzzo (CRD #4764317, Associated Person, Sicklerville, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Scavuzzo consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. (NASD Case #C9B040101)

**Kevin Paul Schwendemann (CRD #4799095, Associated Person, Glendale, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 45 days. The fine must be paid before Schwendemann reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Schwendemann consented to the described sanctions and to the entry of findings that he failed to disclose a material fact on his Form U4.

Schwendemann's suspension began December 20, 2004, and will conclude at the close of business February 2, 2005. (NASD Case #CLI040030)

**Ramy M. Shaalan (CRD #4496492, Registered Representative, Washington, DC)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Shaalan consented to the described sanction and to the entry of findings that he wrongfully obtained approximately \$96,000 from his member firm and converted the funds to his own use and benefit. NASD also found that Shaalan, in perpetrating the scheme, established a bank account under the name of a fictitious entity of which he was the purported owner. The entity's name was substantially similar to the name of an actual company with which his firm had a business relationship and had on occasion in the past provided business services to the firm. The findings also stated that using an invoice the firm had received from the actual vendor, Shaalan created an invoice template for the fictitious company and on various occasions generated false invoices for services the fictitious company purportedly provided the firm, submitting the false invoices to the firm for payment. The



findings further stated that at Shaalan's request, the checks issued to pay the false invoices were given to him to be transmitted to the fictitious company. Moreover, the findings stated that Shaalan endorsed the checks and deposited them into the bank account he had established in the name of the fictitious company, thereby converting the funds to his own use and benefit. (NASD Case #C9A040050)

**Carlos Akira Shibata (CRD #3101238, Registered Representative, Miami, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Shibata consented to the described sanction and to the entry of findings that he converted approximately \$290,000 of a public customer's funds. The findings also stated that Shibata failed to respond to NASD requests to appear to give testimony and to provide documents. (NASD Case #C07040099)

**Brian Thomas Slichon (CRD #4025395, Registered Representative, Metairie, Louisiana)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Slichon unlawfully withdrew \$10,514.19 from the bank accounts of public customers and converted the funds to his own use and benefit. The findings also stated that Slichon failed to respond to NASD requests for information. (NASD Case #C05040025)

**Elise Clydean Tanner (CRD #1142274, Registered Representative, Seattle, Washington)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Tanner consented to the described sanction and to the entry of findings that she misused the funds of a public customer totaling \$15,000 without the knowledge, consent, or authorization of the customer. The findings also stated that Tanner failed to respond to NASD requests for information. (NASD Case #C04040055)

**Galina Tedeeva (CRD #4491864, Registered Representative, Forest Hills, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Tedeeva consented to the described sanction and to the entry of findings that she arranged for an imposter to take the Series 6 and Series 63 qualification exams on her behalf. (NASD Case #CLI040035)

**Lacy McClure Walthall, III (CRD #713269, Registered Regulation, Wake Forest, North Carolina)** was fined \$35,000, suspended from association with any NASD member in any capacity for one year, and ordered to requalify by exam as a general securities representative (Series 7) before re-entering the securities industry. The sanctions were based on findings that Walthall engaged in outside business activities and private

securities transactions without prompt written notification to his member firm and his firm's written approval to engage in the private securities transactions.

Walthall's suspension began December 20, 2004, and will conclude at the close of business December 19, 2005. (NASD Case #C07040048)

**Eloise Ruth Worden (CRD #2654863, Registered Principal, Denton, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Worden consented to the described sanction and to the entry of findings that, as the treasurer of a condominium association, she misused funds totaling \$3,800 belonging to the association without the knowledge, consent, or authorization of the association. (NASD Case #C04040054)

**Matthew Philip Wright (CRD #4097839, Registered Representative, Kingsport, Tennessee)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wright consented to the described sanction and to the entry of findings that he forged the signature of his manager on blank checks from a bank account of an affiliate of his member firm and attempted to negotiate one of the checks for \$10,000 by depositing the check into his personal bank account to apply the funds to satisfy personal debt. The forgeries and attempted conversion were done without the knowledge or consent of the firm's affiliate. (NASD Case #C05040085)

## Decision Issued

The following decision has been issued by the Office of Hearing Officers and has been appealed to or called for review by the NAC as of December 3, 2004. The findings and sanctions imposed in the decisions may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notice to Members*.

**Joseph Rogala (CRD #1051594, Registered Representative, Glen Ellyn, Illinois)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Rogala affixed the signature of a public customer on a forged letter to countermand the customer's directive to stop automatic monthly withdrawals from the customer's checking account, thereby reinstating his commission. The findings also stated that Rogala provided false documentation to NASD. NASD also found that Rogala created and distributed misleading sales literature that failed to disclose material facts and that Rogala failed to obtain prior written approval from his firm for the sales literature.

This decision has been appealed to the NAC, and the sanction is not in effect pending consideration of the appeal. (NASD Case #C8A030089)

## Complaints Filed

NASD issued the following complaints. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by NASD in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint. Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

**Thomas James Carr (CRD #1613787, Registered Representative, Encinitas, California)** was named as a respondent in an NASD complaint alleging that he effected transactions in the account of a public customer without the knowledge and consent of the customer, and without having a reasonable basis for believing that the recommendations were suitable for the customer on the basis of the facts disclosed by the customer as to its other security holdings, financial situation, and needs. The complaint also alleges that Carr failed to respond to NASD requests for information. (NASD Case #C01040029)

**John Barry Chambers (CRD #2136192, Registered Representative, Dallas, Texas)** was named as a respondent in an NASD complaint alleging that, in connection with the purchase of purported shares by public customers in a company he had recently formed and inducements for the purchases, Chambers, directly or indirectly, by the use of means or instrumentalities of interstate commerce or the mails, employed artifices, devices, or schemes to defraud; made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; engaged in acts, practices, or courses of business that operated or would operate as a fraud or deceit; and/or effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive, or other fraudulent devices or contrivances.

The complaint also alleges that Chambers induced public customers to submit to his company or its agent approximately \$180,600 for investing in the company and, without the knowledge, authorization, or consent of the customers, used a large portion, if not virtually all, of the customer funds for his own use and benefit, thereby misusing and/or converting the funds. In addition, the complaint alleges that Chambers recommended that public customers invest in his company without reasonable grounds to believe the investments were suitable for the customers in light of their financial

situation, investment objectives, needs, and the risks associated with the investments. Furthermore, the complaint alleges that Chambers engaged in private securities transactions and outside business activities without prompt prior written notice to his member firm. Moreover, the complaint alleges that Chambers willfully failed to amend and to amend timely his Form U4 with material information. (NASD Case #CLI040031)

**James Anthony Dvorznak (CRD #2874901, Registered Representative, Bethpage, New York)** was named as a respondent in an NASD complaint alleging that he effected, or caused to be effected, unauthorized purchases of common stock in the accounts of public customers. The complaint also alleges that Dvorznak failed to respond to NASD requests to appear to give testimony. (NASD Case #C07040097)

**Scott Michael Epstein (CRD #4268699, Registered Representative, Marlboro, New Jersey)** was named as a respondent in an NASD complaint alleging that he engaged in a pattern of unsuitable mutual fund switching in the accounts of public customers without having reasonable grounds for believing that the transactions were suitable for the customers in view of the nature of the recommended transactions, and in light of the customers' financial situations, investment objectives, circumstances, and needs. The complaint also alleges that, in addition to the switch transaction, Epstein recommended that customers invest in funds utilizing proceeds from other funds that were nearly identical, thereby incurring higher annual expenses and lower returns. In addition, the complaint alleges that Epstein also recommended that a customer invest in Bond Funds utilizing proceeds from an IRA account. The complaint further alleges that in connection with the mutual fund recommendations to customers, Epstein, by use of the instrumentalities of interstate commerce or the mails, intentionally or recklessly, employed devices to defraud customers by making untrue statements of material facts or omitting material facts necessary to make the statements, in light of the circumstances in which they were made, not misleading. (NASD Case #C9B040098)

**Juan Carlos Ly (CRD #2520403, Registered Representative, Maiden, North Carolina)** was named as a respondent in an NASD complaint alleging that he recommended that public customers of his former member firm switch their variable annuities to a variable annuity with his new member firm without a reasonable basis for recommending the switches and failed to verify the relative cost structures of the annuities and did not know that the cost structure for the variable annuity with his new firm would be higher. The complaint also alleges that Ly misrepresented on his firm's Variable Products Broker/Dealer Account Form that a variable annuity had a lower cost structure than the annuity being relinquished. (NASD Case #C07040092)

**Edward Alan Martin (CRD #2193457, Registered Principal, Franklin, Tennessee)** was named as a respondent in an NASD complaint alleging that he received \$40,000 intended for investment advisory services from a public customer, deposited the check into a personal account without the knowledge or consent of either the customer or his member firm, and used the funds for business and personal expenses, thereby converting the funds to his own use and benefit. The complaint also alleges that Martin told his member firm that the customer had not renewed the advisory services agreement, but when confronted by his member firm, he remitted \$40,000 to the firm. The complaint further alleges that Martin converted \$6,000 belonging to his member firm by retaining the amount of the advisory fee to which the firm was entitled in excess of his compensation. (NASD Case #C05040084)

**Joseph Peter Orozco (CRD #1019164, Registered Representative, Burbank, California)** was named as a respondent in an NASD complaint alleging that he received \$471,280.09 from a public customer to purchase variable annuities, forwarded the check to his member firm, which was unable to process the check because it was made payable to the firm's former clearing firm, and returned the check to Orozco. The complaint also alleges that Orozco failed to tell the customer that his firm had returned the check, that he never purchased the variable annuities on the customer's behalf, and that he maintained possession of the check, falsely representing to the customer that it had been deposited and the annuities purchased. In addition, the complaint alleges that Orozco reported to his member firm that he had not received any customer correspondence even though he had received letters from his customer inquiring about the status of the accounts. Furthermore, the complaint alleges that Orozco provided false statements to the public customer and his member firm regarding the status of the variable annuities he allegedly purchased, and to his member firm regarding the receipt of customer correspondence. Moreover, the complaint alleges that Orozco failed to complete an NASD on-the-record interview. (NASD Case #C02040045)

**Douglas Alan Rauh (CRD #1465225, Registered Principal, Laguna Niguel, California)** was named as a respondent in an NASD complaint alleging that he willfully failed to disclose material information on his Forms U4. The complaint also alleges that Rauh exercised discretion in the accounts of public customers without their prior written authorization to exercise such discretionary power by the customers and without receiving written acceptance of the discretionary accounts by his member

firm. In addition, the complaint alleges that Rauh effected transactions in the account of a public customer without reasonable grounds for believing such transactions were suitable for the customer in view of the size, frequency, concentration of speculative securities, and nature of the recommended transactions in light of the customer's financial situation, investment objectives, circumstances, and needs. Furthermore, the complaint alleges that Rauh executed options trades in the account of a public customer without reasonable grounds for believing that the customer was capable of evaluating the transactions risks and financially able to bear the risks of the recommendations, and that the trades were suitable. (NASD Case #C02040044)

### **Firms Suspended for Failure to Supply Financial Information**

The following firms were suspended from membership in the NASD for failure to comply with formal written requests to submit financial information to NASD. The action was based on the provisions of NASD Rule 9552. The date the suspension commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

Archon Securities, LLC  
Phoenix, Arizona  
(December 10, 2004)

Joseph Wrobel  
Las Vegas, Nevada  
(November 22, 2004)

### **Firms Expelled for Failing to Pay Fines and/or Costs in Accordance with NASD Rule 8320**

Aristatrade Securities, LLC  
Astoria, New York  
(November 30, 2004)

Intra Network Securities  
Rancho Santa Fe, California  
(December 13, 2004)

Investmentpost Inc.  
Augusta, Georgia  
(December 9, 2004)

**Individuals Suspended Pursuant to NASD Rule 9552 for Failure to Provide Information Requested Under NASD Rule 8210**

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

**Lazariw, Rosemary L.**  
Tampa, Florida  
(December 6, 2004)

**Siddons, Daniel R.**  
West Chester, Pennsylvania  
(December 7, 2004)

**Individual Barred Pursuant to NASD Rule 9552 for Failure to Provide Information Requested under NASD Rule 8210**

(The date the bar became effective is listed after the entry.)

**Fernandez, George I.**  
Miami, Florida  
December 6, 2004)

**Individuals Revoked for Failing to Pay Fines and/or Costs in Accordance with NASD Rule 8320**

**Apgar, Justin E.**  
Wall Township, New Jersey  
(November 30, 2004)

**Koppel, Yakov (Jack)**  
Loch Sheldrake, New York  
(November 30, 2004)

**McClure, Randy L.**  
Dunedin, Florida  
(December 9, 2004)

**Pearson Jr., Dennis A.**  
San Diego, California  
(December 13, 2004)

**Sosa, Edwardo X.**  
New York, New York  
(December 9, 2004)

**Individual Suspended Pursuant to NASD Rule Series 9510 for Failure to Comply with an Arbitration Award or a Settlement Agreement**

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

**Barton, Frederick J.**  
Atlanta, Georgia  
(December 6, 2004)

**Edward Jones to Pay \$75 Million to Settle Revenue Sharing Charges**

The SEC, NASD and the New York Stock Exchange (NYSE) announced settled enforcement proceedings against Edward D. Jones & Co., L.P., a registered broker-dealer headquartered in St. Louis, Missouri, related to allegations that Edward Jones failed to adequately disclose revenue sharing payments that it received from a select group of mutual fund families that Edward Jones recommended to its customers.

As part of the settlement of all three proceedings, Edward Jones will pay \$75 million in disgorgement and civil penalties. All of that money will be placed in a Fair Fund for distribution to Edward Jones customers. Edward Jones also agreed to disclose on its public Web site information regarding revenue sharing payments and hire an independent consultant to review and make recommendations about the adequacy of Edward Jones' disclosures.

According to an Order issued by the SEC, Edward Jones entered into revenue sharing arrangements with seven mutual fund families, which Edward Jones designated as "Preferred Mutual Fund Families."

Edward Jones told the public and its clients that it was promoting the sale of the Preferred Families' mutual funds because of the funds' long-term investment objectives and performance. At the same time, Edward Jones failed to disclose that it received tens of millions of dollars from the Preferred Families each year, on top of commissions and other fees, for selling their mutual funds. Edward Jones also failed to disclose that such payments were a material factor, among others, in becoming and remaining an Edward Jones Preferred Family. Edward Jones provided the Preferred Families with certain benefits not otherwise available to non-preferred families including, among other things, exclusive shelf space for the sale



and marketing of their funds and exclusive access to Edward Jones' investment representatives (IRs) and customer base. Edward Jones also exclusively promoted the 529 college savings plans offered by its Preferred Families over all other 529 plans that it had available to sell.

Linda Chatman Thomsen, Deputy Director of the SEC's Division of Enforcement, said, "Edward Jones' undisclosed receipt of revenue sharing payments from a select group of mutual fund families created a conflict of interest. When customers purchase mutual funds, they should be told about the full nature and extent of any conflict of interest that may affect the transaction. Edward Jones failed to do that."

Merri Jo Gillette, Regional Director of the SEC's Midwest Regional Office, added, "Edward Jones made affirmative representations to investors regarding its purported reasons for recommending the mutual funds offered by the seven Preferred Families, but failed to inform investors of one important factor: that it was being paid undisclosed compensation by those fund families. By not telling investors the whole story, Edward Jones violated the federal securities laws."

"Beyond its disclosure failures, Edward Jones engaged in other activities that violate NASD rules aimed at precluding conflicts of interest—including accepting directed brokerage payments and staging a sales contest to promote the Preferred Funds," said Barry Goldsmith, NASD Executive Vice President and Head of Enforcement. "These kinds of activities increase the potential for investors to be steered into investments that serve the financial interests of the firm and its representatives instead of the best interest of the customers."

"Firms have a responsibility to supervise all their business activities," said Susan Light, Vice President of Enforcement, NYSE Regulation. "Edward Jones's supervisory lapses are especially troubling in this case because of the direct conflict between the firm and its customers."

According to the Commission's Order, Edward Jones had entered into selling agreements with approximately 240 mutual fund families, but only the seven Preferred Families made these payments to Edward Jones. Edward Jones, its general and limited partners, and its IRs received financial benefits from the Preferred Families' payments. Edward Jones exclusively promoted the Preferred Families' funds over all other mutual funds. Historically, over 95 percent of Edward Jones' sales of mutual fund shares have been sales of the seven Preferred Families.

In NASD's separate settlement, in addition to the receipt of direct revenue sharing payments, NASD found that the firm gave preferential treatment to the Preferred Funds in exchange for millions of dollars in directed brokerage from three of the Preferred Fund families. This violates NASD's "Anti-Reciprocal Rule," Conduct Rule 2830(k), which prohibits regulated firms from favoring the distribution of shares of particular mutual funds on the basis of brokerage commissions to be paid by the fund companies.

NASD also charged Edward Jones with holding an unlawful sales contest in the fall of 2002. Winning brokers could choose a trip from among a list of 35 "world class" vacation destinations, such as Singapore, St. Martin, Davos, Biarritz and Tortola. These sales contests, which were held every six months, rewarded the winners with airfare, five-star accommodations, and treats attendees to activities such as skiing, golfing, fine dining, and tours. During October 2002, Edward Jones changed the contest rules and only credited sales of funds that were on the Preferred Funds list. This violates NASD rules that prohibit product-specific sales contests that credit the sale of certain, but not all, fund sales. Indeed, some brokers complained that "doing the right thing for the client" (by recommending non-preferred funds and variable annuities) penalized their chance to earn a sales contest trip.

NASD also found that the firm failed to retain e-mails, failed to supervise the late trading of mutual funds, and failed to supervise the activities relating to the Preferred Funds and revenue sharing, directed brokerage, and sales contests.

NYSE Regulation found that Edward D. Jones & Co.'s conduct was inconsistent with just and equitable principles of trade and failed to adhere to good business practices in violation of NYSE Rules 476 and 401. In violation of Rule 342, the firm failed to supervise its business with respect to revenue sharing agreements, late trading of mutual funds and email retention.

In addition to the \$75 million payment, Edward Jones has agreed to be censured and to cease and desist from committing or causing violations of Section 17(a)(2) of the Securities Act of 1933, Section 15B(c)(1) of the Securities Exchange Act of 1934 and Rule 10b-10 promulgated thereunder and Municipal Securities Rulemaking Board Rule G-15. The SEC's Order further requires Edward Jones to comply with certain undertakings, including hiring an independent consultant to review and make recommendations about the adequacy of Edward Jones' disclosures. Edward Jones has consented to the issuance of the SEC's Order, without admitting or denying the findings contained therein.

## **NASD Fines H&R Block Financial Advisors \$500,000 for Enabling Deceptive Market Timing, Orders Payment of \$325,000 in Restitution**

### **NASD Investigation of Individuals Involved in Scheme is Continuing**

NASD censured and fined H&R Block Financial Advisors, Inc., \$500,000 for enabling a hedge fund customer in its Orlando, FL branch office to engage in deceptive practices to market time mutual funds. NASD also ordered H&R Block to pay \$325,000 to reimburse the affected funds.

"The deceptive market timing practices found in this investigation do more than just violate securities regulations—they have a profoundly negative impact on investor confidence" said Mary Schapiro, NASD Vice Chairman. "The enforcement action announced today, and similar cases we have brought in recent months, make clear that NASD expects firms to have enhanced procedures, systems, and practices to ensure that illicit market timing activities like these do not occur."

NASD found that from October 2002 to July 2003, H&R Block, through the actions of two brokers in its Orlando office and the Orlando branch office manager, enabled one of the brokers' customers to evade mutual fund attempts to block or restrict the client's market timing transactions. H&R Block recruited and hired the two brokers in September 2002 knowing the brokers were going to open accounts for hedge funds that intended to actively trade or market time in mutual funds that discouraged or limited such trading. Each of these clients was permitted to open fee-based accounts, even though the firm acknowledged that these accounts were not meant for investors primarily intending to market time. Because these customers were going to engage in market timing, H&R Block charged them a flat fee of 1 percent, which was higher than the customary fee for fee-based accounts of the same size.

NASD also found that the two Orlando brokers opened a total of 19 accounts for seven clients. The accounts held approximately \$32 million in assets. One of those hedge fund clients used seven different accounts to engage in deceptive market timing practices.

Through the Orlando brokers and the Orlando branch office manager, H&R Block enabled the Orlando customer, whose trading exceeded funds' prospectus limitations, to evade fund restrictions. H&R Block received 44 restriction letters designed to block this hedge fund customer's market timing activities. After H&R Block received these letters, the firm, through the Orlando brokers and branch office manager, enabled the hedge fund to use related accounts to continue trading in restricted funds. In addition, H&R Block allowed the customer to open two new accounts with funds from existing H&R Block accounts or from common bank accounts, and this customer used the new

accounts to continue to market time funds that had restricted its related accounts. H&R Block also allowed the customer to open a related account with one of the firm's brokers in New York City, and that account also market timed some mutual funds that had already restricted the customer's other H&R Block accounts.

Through its deceptive conduct, the customer executed 64 fund purchases and sales that violated fund restrictions and made approximately \$325,000 from these violative trades.

NASD found that the Orlando brokers also attempted to help their clients avoid restriction letters by requesting that the firm change the broker of record on nine accounts from one of the two brokers to the other. One of the brokers also requested that the broker of record for one account be changed an Orlando branch house account. The Orlando branch office manager approved, and the firm processed, the requested transfers.

NASD also found that H&R Block failed to have adequate policies and procedures in place to prevent its brokers and clients from market timing mutual funds in violation of fund restrictions, and failed to adequately respond on a timely basis to the red flags that would have alerted it to the efforts of the Orlando hedge fund customer and Orlando brokers to evade fund restrictions.

In settling with NASD, H&R Block neither admitted nor denied the allegations, but consented to the entry of NASD's findings.

NASD's investigation into the activities of particular individuals involved in this market timing scheme is continuing.

## **SEC, NASD Sanction Knight Securities \$79 Million for Fraudulent Sales to Institutional Customers**

### **Includes \$25 Million in Fines, \$41 Million in Ill-Gotten Gains, \$13 Million in Interest; NASD Investigation Into Activities of Individuals Involved in Scheme Continues**

The SEC and NASD announced today that Knight Securities, L.P., now known as Knight Equity Markets, L.P., will pay over \$79 million to settle charges that it defrauded its institutional customers. Under this joint settlement, Knight will pay a \$12.5 million fine to NASD and a \$12.5 million civil penalty to the SEC. Knight is also ordered to pay \$41 million in ill-gotten profits and \$13 million in prejudgment interest into a Fair Fund established by the SEC for compensating harmed investors.

The SEC and NASD found that Knight's former leading institutional sales trader priced trades in a manner contrary to customers' expectations and industry custom, using deceptive trading practices to disguise his pricing and the amount of Knight's profits.

"Every firm has a fundamental obligation to trade honestly and fairly with its customers, regardless of the customers' level of sophistication," said NASD Vice Chairman Mary L. Schapiro. "Knight's fraudulent trading, extracting millions of dollars of excess profits from its institutional customers for two years, requires the strong sanctions imposed here."

During 1999 and 2000, the sales trader generated a total of approximately \$41 million in illegal profits for Knight executing orders from his institutional customers, including managers of mutual funds. The sales trader had Knight acquire a stock position after he received an institutional customer's order, and then waited until the price of the stock moved before executing trades to fill the customer's order, creating greater profits for Knight at the expense of his customer. If the price of the stock moved in favor of Knight's position, the sales trader delayed executions and traded with his customers at prices reflecting the positive price movement. If the price of the stock moved against Knight's position, the sales trader executed trades with customers based upon prices at an earlier time, which were more advantageous to Knight. His customers did not know when, or at what prices, Knight acquired stock pursuant to their orders, and the sales trader took advantage of that in trading with them, making tens of millions of dollars in excessive profits at their expense.

The SEC and NASD also found that Knight failed to adequately supervise the sales trader's trading. The sales trader's supervisor and the former head of Knight's institutional sales department (the "desk supervisor") was his brother. The brothers had a profit-sharing arrangement, approved by Knight, which gave the desk supervisor half of the sales trader's trading compensation. This profit-sharing arrangement created an inherent conflict of interest with the desk supervisor's supervisory responsibilities for the sales trader's trading. While the sales trader was generating extraordinary profits in his trading with institutional customers, neither the desk supervisor nor anyone else at Knight conducted a meaningful review of the sales trader's trading. No one in a supervisory role questioned the extraordinary profits that the sales trader generated, or undertook any steps to see how he was making them.

Knight's institutional sales traders were also found to have reported thousands of trades improperly to ACT during the period from April 2000 through March 2001. Knight's traders improperly reported trades with .SLD modifiers (indicating a late trade report) and .PRP modifiers (indicating an execution that was supposed to have occurred earlier, based upon the price at a prior time) so Knight's trading system would accept trades that were executed at prices different from the inside market at the time the trades were reported. Despite the long-running problem, Knight did not take reasonable steps to educate traders about the use of ACT modifiers, or enforce a system to prevent

the improper ACT reporting. The SEC and NASD sanctioned Knight for these supervisory failures.

NASD also found supervisory failures by Knight over trading in proprietary "back book" accounts used by some of Knight's employees for speculative trading. Traders received a higher percentage of profits generated in back book accounts than for profits in their market making accounts, giving them greater incentive to generate profits in the back book accounts. Knight did not have specific written supervisory procedures governing the use and supervision of those accounts.

In addition, NASD found that Knight had failed to produce documents in a timely manner to NASD during NASD's investigation. Knight also improperly reported to NASD that the desk supervisor and the sales trader had terminated their employment voluntarily, instead of advising NASD that they had been permitted to resign. The desk supervisor and the sales trader left Knight after the firm notified them that it wanted to terminate their employment. Knight filed forms with NASD (Form U5) wrongly advising NASD that their terminations had been voluntary.

Knight agreed to the sanctions while neither admitting nor denying the allegations. NASD's investigation into the activities of particular individuals involved in this matter is continuing.

### **NASD Orders First Command to Pay \$12 Million for Misleading Statements in Sales of Systematic Investment Plans to Military Personnel**

#### **Firm to Pay Restitution, Fund Investor Education Program for Military Community**

NASD censured and fined First Command Financial Planning Inc., a Fort Worth, TX broker-dealer, \$12 million for making misleading statements and omitting important information when selling mutual fund investments with up-front sales charges of up to 50 percent through a monthly installment method known as a "Systematic Investment Plan."

From that \$12 million, First Command is ordered to pay restitution to thousands of customers who purchased a Systematic Investment Plan between Jan. 1, 1999 and the present who terminated the plan and paid an effective sales charge greater than 5 percent. All money remaining will be payable to the NASD Investor Education Foundation, to be used for the investor education needs of members of the military and their families. The Foundation will use the funds to support educational programs, materials and research to help equip members of the military community with the knowledge and skills necessary to make informed investment decisions. It is anticipated that the Foundation will receive approximately \$8 million.

In the action announced today, First Command also settled NASD charges of inappropriately confronting a customer who complained, failing to maintain e-mail, failing to maintain adequate supervisory systems and procedures, and filing an inaccurate Form U-5 regulatory report. In a related action, NASD fined a First Command supervisor \$25,000 and suspended him from acting in any supervisory capacity for 30 days.

The SEC instituted settled enforcement proceedings against First Command based on similar allegations relating to the firm's sales of systematic investment plans.

"Using misleading sales scripts, inappropriate comparisons, and omissions of important information, First Command sold hundreds of thousands of complicated and often enormously expensive plans to young members of our armed services, who are frequently inexperienced investors," said NASD Vice Chairman Mary L. Schapiro. "These investors, like all others, are entitled to balanced and honest information about investment alternatives. And it is inexcusable that a First Command sales supervisor would try to stifle an airman's complaint by suggesting, among other things, that sending his complaint violated Air Force regulations."

Under Systematic Investment Plans, an investor makes monthly payments for a fixed term, typically 15 years, which are invested in underlying mutual funds. The purchaser is charged a 50 percent sales load on the first 12 monthly payments. Payments over the remainder of the term are not subject to sales charges so that the effective sales charge decreases so long as the purchaser continues to make additional investments. However, if the investor does not terminate within 18 months, and then fails to complete the term, he or she will pay a sales charge of up to 50 percent of the amount invested. At the conclusion of NASD's investigation of this case, First Command informed NASD that it is eliminating the sale of new Systematic Investment Plans.

NASD found that First Command primarily sold the plans to commissioned and non-commissioned officers. The firm's customer base includes over 297,000 current and former military families. Forty percent of current active duty general officers, one-third of commissioned officers and 16 percent of noncommissioned officers are First Command clients. First Command's sales force consists primarily of former military personnel. Its executive officers, supervisors, managers and its Board of Advisors are primarily retired or separated military personnel.

NASD found that the firm sold the plans through the use of a three-step scripted sales process that contained misleading statements and omissions. For example:

- First Command emphasized in its sales that the 50 percent sales load would decrease to 3.3 percent upon completion of the term and that the high up-front sales charges

increased the likelihood that an investor would complete the plan. However, the Firm's own data showed that historically, only 43 percent of its customers completed the 15-year term.

- First Command told its clients that a benefit of the high first-year sales charge was to "instill discipline." However, First Command failed to inform its customers of the lost earnings potential as a result of the sales charges deducted from the customer's first 12 months' investments. For example, an investor who made monthly payments of \$100, totaling \$1,200 in the first year, would be left with an investment in the funds of only \$600 for that year.
- First Command also made misleading statements when comparing their plan with other mutual fund investments, telling investors that no-load mutual funds were primarily for speculators and that no-load funds frequently have some of the highest long-term costs. In fact, the long-term costs of owning no-load funds are, on average, lower than owning load funds.
- First Command, in a training manual, cautioned its representatives when looking for prospects:
- *"Don't ask or suggest to a 'termite' [a person who purchases term insurance, and invests the remainder in mutual funds] or 'no loader' [an individual who advocates the purchase of no-load mutual funds] who refuses to accept our philosophy that he talk with referrals. This is like voluntarily spreading a cancer in your market."*

NASD also found that First Command violated NASD rules when a First Command supervisor inappropriately confronted a former customer—an Air Force officer—who complained in an e-mail to an online publication that he had suffered losses and recommended that others not invest with First Command. The e-mail was in response to a negative article about First Command's sales practices.

First Command District Supervisor James Provo contacted the customer, suggested that he might need an attorney, told him that the highest level of Air Force commanders were being contacted regarding the e-mail and told him his previously approved change in assignment might be delayed until the matter was resolved. NASD also found that Provo arranged a meeting with the Air Force's legal assistance office, questioning whether the customer had violated Air Force regulations by using e-mail to send his message criticizing First Command. Provo also contacted the customer's squadron commander and informed her that First Command might have a grievance against a member of her squadron. First Command eventually wrote a letter of apology to the former client, but otherwise took no steps to discipline Provo.



In a separate action, NASD fined Provo \$25,000 and suspended him from serving in a supervisory capacity for 30 days. In settling the matter, Provo neither admitted nor denied the allegations, but consented to the entry of NASD's findings.

In addition to making payments for restitution and investor education of military personnel and their families, First Command is required to hire an independent consultant to oversee the payment of restitution and review its sales practices. First Command must also pre-file its advertising materials with NASD for one year.

First Command agreed to the sanctions while neither admitting nor denying the allegations.

NASD issued *Systematic Investment Plans—Educate Yourself Before You Enlist*, an Investor Alert aimed at informing military and other investors about the risks of investing in Systematic Investment Plans.

### **NASD Fines Sigma Financial for Suing Customers in Violation of NASD's Arbitration Code**

#### **Firm Pays Customers' Legal Costs, Firm President Suspended**

NASD censured and fined Sigma Financial Corporation of Ann Arbor, MI and its president, Jerome Rydell, \$135,000 for violating NASD's Code of Arbitration Procedure—by frivolously pursuing legal action against an elderly couple who had won an arbitration award against the firm.

In addition, Rydell was suspended for 10 business days in all supervisory capacities. Sigma has reimbursed the elderly couple for the \$110,000 in attorney fees and costs they incurred in defending themselves for three years. NASD also ordered Sigma to certify annually, for a period of two years, that it has fully complied with the NASD Code of Arbitration Procedure in connection with any customer disputes. Sigma must also notify NASD prior to taking any legal action against customers in federal or state court.

The settlement resolves an NASD complaint filed against Sigma and Rydell in December 2003.

"This firm used the courts to carry out a campaign of harassment against two elderly customers because of an arbitration award it did not like—in clear violation of NASD rules and the firm's own agreement with its customers," said NASD Vice Chairman Mary L. Schapiro. "This kind of conduct will not be tolerated. "

As described in detail in an NASD News Release earlier this year, the couple filed an arbitration claim in July 1999 after losing money in investments they had made through the firm. In April

2001, following seven days of hearings, an NASD arbitration panel awarded the customers \$318,096, including attorney fees and costs. Unhappy with that result, Sigma, acting through Rydell, filed two lawsuits against the customers in Michigan Circuit Court later that same month.

The first lawsuit was an attempt to vacate the arbitration award. In the second lawsuit, Sigma claimed, for the first time, that it was entitled to damages as a third-party beneficiary to agreements the customers had signed with the issuer of the investments they had purchased through Sigma. Sigma did not seek to arbitrate this claim, despite NASD rules and its own agreement to arbitrate any controversy and waive its right to seek remedies in court.

The Michigan Circuit Court confirmed the arbitration award, dismissed Sigma's second lawsuit and sanctioned the firm \$500 for filing a frivolous claim. Nevertheless, Sigma continued to litigate against the elderly customers. On February 19, 2004, the Michigan Court of Appeals upheld the Circuit Court's confirmation of the arbitration award, dismissal of the third-party beneficiary lawsuit, and imposition of monetary sanctions.

Still not satisfied, Sigma, through Rydell, then filed an appeal with the Michigan Supreme Court. Sigma took this action more than three months after NASD had instituted these enforcement proceedings against Sigma and Rydell, and nearly three years after the customers had received their Award. The firm withdrew the appeal to the Supreme Court in connection with this settlement.

In settling these charges, Sigma and Rydell neither admitted nor denied the charges.

### **NASD Bars Broker For Charging Fraudulent Mark-Ups Broker and Radio Personality John Van Defrauded Incapacitated Investor**

NASD barred John Van, principal of Murphy Van Securities, Inc., of Clifton Park, NY and an upstate New York radio personality, for knowingly charging fraudulent and excessive mark-ups on Treasury Notes to a disabled customer and for making misrepresentations to the customer's attorney. Van's radio program, *The Murphy Van Financial News Hour*, was broadcast until recently on WCSS AM 1240 in Amsterdam, NY and on WENT AM 1340 in Gloversville, NY.

NASD found that in January 2004, a custodial account was opened at Murphy Van Securities, Inc., for a completely incapacitated individual in a vegetative state who had received a multi-million dollar settlement in connection with a medical malpractice lawsuit. Approximately \$3.3 million from the malpractice settlement was deposited in the custodial account.

NASD's investigation revealed that in obtaining the account, Van misrepresented to the customer's counsel that transaction fees would not exceed 1 percent. In fact, he began charging transaction fees in the form of mark-ups ranging from 2.936 percent to 3.054 percent. NASD found that Van knowingly charged fraudulent and excessive mark-ups on three U.S. Treasury Note transactions that had an aggregate value of approximately \$3.3 million. The fraudulent and excessive markups on those transactions totaled approximately \$64,000.

In settling this matter, Van neither admitted nor denied the charges.

### **NASD Bars Former AmSouth Broker for Fraud in the Sale of Variable Annuities**

#### **Sales Assistant Charged with Forgery and Falsification of Documents**

NASD announced that James B. Moorehead of Starkville, MS, has been barred from the securities industry for engaging in fraud, forgery, and falsification of documents in connection with variable annuity sales. The transactions took place between March 2000 and April 2001 while Moorehead was a registered representative of AmSouth Investment Services, Inc.

Moorehead's sales assistant, Angela C. Wynne, has also been charged in connection with the scheme.

"The conduct of the broker in this case was reprehensible, and clearly merits the harshest penalty NASD can impose," said NASD Executive Vice President and Head of Enforcement Barry Goldsmith.

NASD found that Moorehead misrepresented the risks associated with investing in variable annuities and purposefully omitted risk disclosure statements from the performance hypotheticals his firm sent to customers. Moorehead also either forged, or caused his assistant to forge, customer signatures on 125 "Purchase Authorization Forms." These documents were intended to reflect customers' authorization to Moorehead to purchase variable annuities.

Moorehead also tried to make his variable annuity recommendations appear suitable by falsifying the suitability information on the Purchase Authorization Forms and on "Client Confidential Profiles." Moorehead directed his assistant to complete the forms with inaccurate information concerning the financial needs and condition of the customers.

In concluding this settlement, Moorehead neither admitted nor denied the charges, but consented to the entry of NASD's findings.

NASD has also filed a complaint against Moorehead's assistant, Angela C. Wynne, a general securities representative formerly associated with AmSouth. The complaint charges Wynne with forgery and falsification of documents. NASD is currently investigating the supervision of Moorehead and Wynne by AmSouth Investment Services, Inc.

Under NASD rules, an individual named in a complaint can file a response and request a hearing before an NASD disciplinary panel. Possible sanctions include a fine, order to pay restitution, censure, suspension, or bar from the securities industry.